To strengthen and promote cities as centers of opportunity, leadership, and governance.

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On behalf of

The National League of Cities

Before the

House Committee on Government Reform

On "The Federalism Act of 1999" (H.R. 2245).

Good morning Mr. Chairman and members of the Committee, my name is Clarence E. Anthony and I am the Mayor of South Bay Florida and President of the National League of Cities (NLC). I am pleased to be here this morning to testify before you with my colleagues on what we believe is groundbreaking federal legislation, "The Federalism Act of 1999" (H.R. 2245). This bill embraces and preserves the cherished principle of federalism and promotes a new federal –state-local partnership with respect to the implementation of certain federal programs. I thank the Committee for having this hearing today. I would also like to thank Congressmen McIntosh, Moran, Portman, Castle, Condit and Davis and Congresswoman McCarthy for working with the members of the Big 7 state and local government organizations to craft a bill that illustrates the cooperative and bipartisan dynamic that should exist between our levels of government. We look forward to working with the members of this Committee to achieve the true partnership envisioned in this bill.

The National League of Cities is the oldest and largest organization representing the nation's cities and towns and their elected officials. NLC's member cities range in size from the very large, like New York City – population 7.3 million to the very small like my city of South Bay, Florida – population 3,558. Whatever their size, all cities are facing significant

federal preemption threats to historic and traditional local fiscal, land use and zoning authority. Whatever their size, all cities will benefit from legislation such as H.R. 2245. We are grateful to you for recognizing that the issue of federal preemption of state and local laws is an important one, not just to us, but to all Americans.

What brings us all here today? It is nothing less than the pervasive and imminent threat of preemption by the federal government. It is the National League of Cities highest priority to put a meaningful check on this preemption of state and local authority. Allow me to cite to you a few of the invasive actions the federal government has taken in the just last few months.

First and foremost, the legislation signed into law last October which impedes states' and local governments' ability to tax sales and services over the internet in the same manner as all other sales and services are taxed – despite the fact that no such limitations would apply to the federal government. There has also been a bill moving quickly through the House of Representatives called the "Religious Liberty Protection Act of 1999" which is a massive preemption of state and local zoning and land use laws. This bill, if enacted into law, would chill a city's ability to apply neutral zoning laws that impact an entire community equally, to religious based land

uses like churches, synagogues and mosques. Local zoning and land use laws also face severe preemption in the area of takings law, with the re-introduction of takings legislation in the Senate which would allow developers to pursue takings claims in federal court without first exhausting state judicial procedures. Current law preempts municipal authority over the siting of group homes, and preempts a municipality from applying zoning, environmental, health and safety statutes to railroads. This preemption list goes on and on. All of this legislation was either developed or enacted with minimal to no consideration of the consequences to state and local governments. It is for this reason, that I and my colleagues are here this morning – to ensure that state and local governments are not left holding the bag as a result of uninformed federal action. There can be no dispute that the most significant impacts of these preemptions will be felt at home in our nation's cities and towns through the erosion of local tax bases and through the inability to enforce local ordinances enacted for the benefit of all who live in a community.

But the news is not entirely bad for cities because there have been some signs that the tide of federal preemption may be changing. First, the U.S. Supreme Court issued three decisions last week that affirm states rights and curb the power of Congress to enforce certain federal laws. The Court

recognized that our Constitutional framers envisioned freedom being enhanced by the creation of two governments – federal and state. As Justice Kennedy so eloquently stated in the recent decision in Alden v. Maine, "Congress has vast power but not all power. When Congress legislates in matters affecting the States, it may not treat these sovereign entities as mere prefectures or corporations. Congress must accord States the esteem due to them as joint participants in a federal system, one beginning with the premise of sovereignty in both the central Government and the separate States. In choosing to ordain and establish the Constitution, the people insisted upon a federal structure for the very purpose of rejecting the idea that the will of the people in all instances is expressed by the central power, the one most remote from their control." This statement is at the core of federalism and embodies the true federal –state-local relationship that is at the heart of our system of government.

NLC and the other members of the "Big 7" state and local government groups have been negotiating with the Administration on a new Executive Order on Federalism that will replace the Reagan Executive Order 12612. We hope this new Executive Order will serve to enhance the legislation you are considering this morning and promote our common goal to work together as partners. NLC, however, believes that legislation is still needed

regardless of the existence of an executive order, to ensure that our unique form of federalism remains strong and viable. The reason both a strong Executive Order on federalism and this legislation are needed is because an Executive Order is not law. It does not apply to the independent agencies and there is no provision for judicial accountability. In sum, it would not matter which Executive Order was in effect. An Executive Order simply does not carry the same weight as legislation. NLC appreciates the intent behind the Administration's efforts and recognizes that the goals of this Executive Order are laudable ones. I ask you, what better first steps are there toward achieving a federal –state-local partnership than by addressing the issue of federalism on all fronts of national government. Through the Supreme Court's reaffirmation of federalism in Alden v. Maine, through the Administration's Executive Order, and now by this Congress through the passage of H.R. 2245.

Let me now turn to H.R. 2245. This bill provides cities nationwide with a viable means for alleviating many of the problems associated with federal preemption of local laws.

Mr. Chairman and members of the Committee, we at the local level want to help create a more dynamic federalism. We believe mutual accountability between and among the various levels of government is a good thing. We

want to be your partners in making all of this happen. We want your support for H.R. 2245.

H.R. 2245 represents one of the most important efforts to fundamentally rethink the nature and relationship of our federal system and to expand the partnership of elected governmental officials. H.R. 2245 contains several good tools for creating this new idea of federalism and which are beneficial to cities.

Section 4 of the bill defines a public official as including the national associations of the "Big 7" state and local government organizations. This inclusion is vital to providing cohesiveness to the consultation provision of the bill. It will make it easier to get state and local input from these national associations who can best represent the views of a cross section of their respective memberships.

Section 7 of the bill requires notice to and consultation with state and local elected officials and their representative national organizations by agency heads prior to the consideration of any federal legislation that would interfere with, or intrude upon, historic and traditional state and local rights and responsibilities.

This provision of the bill requires federal agencies to stop, look, listen and think before they leap into the arena of federal preemption. It further

provides cities with a much-needed voice in the rulemaking process, for those rules that would have the most direct and potentially debilitating impact on our nation's cities. Most importantly, it is an opportunity for local elected officials to work more closely, and earlier in the rulemaking process with federal agencies. This will maximize the chance to provide meaningful input and an invaluable exchange of ideas and perspectives. This requirement therefore is mutually beneficial to all levels of government and serves to reinforce the concept of partnership.

This section of the bill would call for a federalism impact assessment which, in the opinion of local elected officials, make the federal agencies really think about what they are doing before they do it. This language in the bill will make the agencies "look outside the box" for help and information; thereby avoiding unsound rules.

Similarly, **Section 8** of the bill requires a federalism impact assessment describing the preemptive impact of the bill or conference report on state and local governments be submitted to any committee or conference committee. These two provisions taken together provide for a greater accountability of our federal government. They provide the opportunity for increased input from those most directly affected by a rule or statute, and

they provide for the opportunity for a more meaningful and balanced federalism.

Another very positive and important aspect of this bill is contained in **Section 9**, " Rules of Construction." This section will provide much-needed guidance at the federal level with respect to the age-old question of "does this federal statute or rule preempt my city's ordinance?" It clarifies instances of federal preemption by requiring that the intent to preempt be expressly stated in the statute or rule. This section should not be interpreted as a prohibition of preemption. To the contrary, this bill recognizes that at times, preemption is appropriate. What this section attempts to do, however, is minimize instances where the intent to preempt not clear – thus punting the ball to the expensive and adversarial legal system. It again makes the federal government accountable for what it does.

This section also creates a presumption against preemption of state and local law and permits cities to govern. These rules of construction therefore are of vital importance to cities.

Last, but certainly not least, **Section 10** of the bill provides cities with an overall check on the federal government's preemption activities by requiring the Office of Management and Budget Information (OMB) to submit to the Director of the Congressional Budget Office (CBO)

information describing each provision of interim final rules and final rules issued during the preceding two calendar years that preempts State or local government authority. CBO must then submit to the Congress a report on the extent of the preemption. Again, this extra check will help all levels of government track federal activities dealing with preemption and provides information to local governments on this critical issue.

Thank you Mr. Chairman and members of the Committee for your kind attention this morning. I would be happy to answer any questions.